

IN THE INCOME TAX APPELLATE TRIBUNAL
PANAJI BENCH, PANAJI
(AT e-Court, PUNE)

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI S.S.VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.69 & 70/PAN/2022

निर्धारण वर्ष / Assessment Years : 2015-16 & 2016-17

ACIT, Central Circle, Goa	Vs.	Ajit Mittal, 801-802, Block-D, Adwalpalkar Shelter, Caranzalem, Panaji PAN : ACQPM5890A
Appellant		Respondent

Assessee by Shri Shailendra Singh &
Shri Susheel Khandelwal
Revenue by Shri P.S. Shivshankar
Date of hearing 12-09-2023
Date of pronouncement 13-09-2023

आदेश / ORDER

PER R.S.SYAL, VP :

These two appeals by the Revenue relate to the assessment years 2015-16 and 2016-17. Since a common issue is raised in these appeals, we are, therefore, proceeding to dispose them off by this consolidated order for the sake of convenience.

2. Briefly stated, the facts for the A.Y. 2015-16 are that the assessee filed his original return u/s.139(4) on 31-03-2016 declaring total income at Rs.38,29,660/-. Thereafter, a search and seizure action was taken u/s.132 upon the assessee on 24-10-2017. The

Assessing Officer (AO) completed the assessment by making an addition of Rs.1,35,42,906/- on account of disclosure made by the assessee in statement u/s.132(4) of the Act. The assessee argued before the Id. CIT(A) that it was a case of unabated assessment and in the absence of any incriminating material found during the course of search, no addition could have been made. The Id. CIT(A) called for the remand report from the AO. Vide the remand report dated 15-02-2022, as reproduced in the impugned order, the AO admitted that though the addition was made on the basis of statement of the assessee u/s.132(4), but no incriminating material was found. He, however, harped on the fact that assessment u/s.153A can be made without there being any incriminating evidence against the assessee. The Id. CIT(A) concurred with the submissions advanced on behalf of the assessee and ordered to delete the addition. Aggrieved thereby, the Revenue has come up in appeal before the Tribunal.

3. Having heard the rival submissions and gone through the relevant material on record, it is seen as an admitted position that the assessment year under consideration is 2015-16. Return for this assessment year was filed belatedly u/s.139(4) on 31-03-2016. Notice u/s.143(2) could have been issued within six months from the end of the financial year in which the return was filed, namely, by 30-09-2016. The assessee was subjected to search on

24-10-2017 and by that time no assessment for the year under consideration was taken up nor could have been taken up by virtue of the limitation u/s 143(2) of the Act. Once the position is so and admittedly no incriminating material was found during the course of search, the addition in respect of such an unabated assessment year could not have been made. Our view is fortified by the recent judgment of the Hon'ble Supreme Court in *Pr.CIT Vs. Abhisar Buildwell (P) Ltd. (2023) 454 ITR 212 (SC)* holding that if the assessment is not pending and no incriminating material is found during the course of search, no addition can be made in the assessment u/s.153A of the Act. It has further been observed that the completed assessment can be reopened by the AO in exercise of powers u/s.147 subject to the fulfilment of requisite conditions and those powers are saved. We are instantly concerned with the assessment u/s.153A of an unabated assessment year for which no incriminating material was found during the course of search. As such, the decision of the Id. CIT(A), deleting the addition on this score, is unexceptionable. However, the AO is at liberty to take recourse to the appropriate legal provisions in the light of the decision in of *Abhisar Buildwell (supra)*, if permissible under the law.

4. Both the sides are in agreement that the facts and circumstances of the addition made for the A.Y. 2016-17 and deleted in the first appeal are *mutatis mutandis* similar to the preceding year. Following the view taken hereinabove, we approve the impugned order on this count.

5. In the result, both the appeals are dismissed.

Order pronounced in the Open Court on 13th September, 2023.

Sd/-
(S.S.VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 13th September, 2023
सतीश

आदेश की प्रतिलिपि □ प्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The respondent
3. The CIT concerned
4. DR, ITAT, Panaji Bench, Panaji
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	12-09-2023	Sr.PS
2.	Draft placed before author	13-09-2023	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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